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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,255	06/23/2000	Grover John Manderfield JR.	P00.0677	1215

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SONNENSCHEIN NATH & ROSENTHAL  
P.O. BOX 061080  
WACKER DRIVE STATION  
CHICAGO, IL 60606-1080

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/07/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)
	09/603,255	MANDERFIELD ET AL.
Examiner	Art Unit	
Niki M. Eloshway	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 22 April 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-10 and 21-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-10 and 21-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### **Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 11-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.
2. Applicant's election without traverse of Group I, the container, in Paper No. 3 is acknowledged.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-10 and 21-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the side wall of the claimed invention is considered "a continuous curve" because it appears that it has straight portions on either side of the center curve.

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Valyi (U.S. 4,040,233). Valyi teaches a container shown in figure 5 having a continuous curve sidewall with lower and upper frustum sections and a mid-section. The container resists permanent deformation when used in a retort process.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi in view of Fortuna (U.S. D279,550). Valyi discloses the claimed invention except for the container having a diameter greater than the height. Fortuna teaches that it is known to provide a container with a diameter greater than the height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Valyi with an increased diameter, as taught by Fortuna, in order to increase the capacity of the container and provide the container with increased stability and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi in view of Edwards (U.S. D270,814). Valyi discloses the claimed invention except for the standing ridge. Edwards teaches that it is known to provide a container standing ridge (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

container of Valyi with a standing ridge, as taught by Edwards, in order to allow the container to be supported more stably on a flat surface.

***Response to Arguments***

10. Applicant's arguments filed April 22, 2003, with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment filed April 22, 2003.

***Response to Amendment***

11. The declaration under 37 CFR 1.132 filed April 22, 2003 is moot since the Pasquale rejection has been withdrawn in view of the amendment filed April 22, 2003.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for

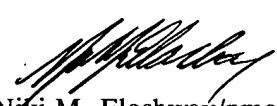
Art Unit: 3727

filings papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Stephen K. Cronin  
Primary Examiner



Niki M. Eloshway/nme  
Patent Examiner  
June 27, 2003